

# **EXHIBIT 3**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
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5   IN RE:    PROCESSED EGG PRODUCTS:                   MDL NO. 2002  
6   ANTITRUST LITIGATION                               08-MDL-02002  
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9                               PHILADELPHIA, PA  
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11                              MAY 7, 2018  
12                              DAY FOUR

13   BEFORE:               THE HONORABLE GENE E.K. PRATTER, J.  
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15                               - - - - -

16                              TRIAL TRANSCRIPT  
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(Transcript produced by mechanical shorthand via C.A.T.)

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1 department, I began having meetings with all the key suppliers  
2 over all the various departments, yogurt, juice, milk,  
3 whatever it might be. I met with our key suppliers in eggs,  
4 Cal-Maine and Country Creek Farms, and during one of the  
5 meetings with Country Creek Farms, they recommended that I  
6 meet with UEP and with their leadership, specifically Gene  
7 Gregory. I did have one of those meetings and at that point  
8 in time, they explained to me about what the UEP Certified  
9 process was.

10 Q. And when you say you met with UEP, that's the United Egg  
11 Producers?

12 A. That is correct.

13 Q. And so you did meet with Mr. Gregory?

14 A. I did.

15 Q. Did you have an understanding of what his role was at the  
16 time at UEP?

17 A. Yes. So he would have been the president of the  
18 organization.

19 Q. And in the course of learning about the Certified  
20 Program, did you come to learn whether Walmart had been a  
21 supporter of the UEP Guidelines?

22 A. I did. So going through that process and meeting with  
23 Mr. Gregory, I did learn that Walmart had been a supporter of  
24 the UEP Certified process for several years.

25 Q. Now, did you understand at this time that the UEP

1 Certified Program included a requirement, sometimes called the  
2 100% rule, which provided that a producer, in order to be  
3 certified to sell to any customers who wanted certified eggs  
4 would have to be certified on all of their facilities  
5 regardless of whether all their customers wanted certified?

6 A. Yeah, I was not. What I understood it to be was a set of  
7 guidelines that were based on scientific information that were  
8 put in place to protect the animal welfare of the hens that  
9 were laying, and that farms needed to be certified so they  
10 could sell eggs. And that was part of the Walmart  
11 specifications at the time.

12 Q. And did you gain any understanding of whether prior folks  
13 at Walmart in your role had any knowledge of this 100% rule?

14 A. Yes. So, you know, speaking with Mr. Poole and others at  
15 Walmart, nobody ever mentioned anything about the 100% rule or  
16 anything to that end around certified process.

17 Q. Okay. Let's put that 100% rule to one side for a moment.

18 Do you recall your reaction to the Certified Program  
19 when you learned about the guidelines?

20 A. Yeah, in general, at Walmart, we were supportive of it.  
21 We were happy that the industry was using scientific-based  
22 processes to understand how they should be treating the hens,  
23 the welfare that they would have, and that that would improve  
24 that, and for several years, at that point in time, we had  
25 been requiring improved animal welfare at Walmart.

1 Q. Mr. Airoso, did Walmart, to your knowledge, ever ask the  
2 United Egg Producers or its members to put together a  
3 certified program for their hens?

4 A. Yeah, absolutely not. There's no question in my mind  
5 that the program was put together by the UEP. It was brought  
6 to Walmart; it was shared with us as a program to improve  
7 animal welfare, and we adopted those practices.

8 Q. Do you recall Walmart, while you were in this role,  
9 receiving pressure from animal rights groups to sell certified  
10 eggs?

11 A. No.

12 Q. Let's talk briefly about how eggs are priced at Walmart.  
13 Have you heard of something called the Urner Barry price?

14 A. I have.

15 Q. And can you describe for us lay-folks and to the jury  
16 what the Urner Barry price is?

17 A. I'm kind of a lay-folk too. So I'll do my best. Urner  
18 Barry is a publication that's put out daily by the Urner Barry  
19 publications group, and it's used within the industry to set  
20 pricing for eggs at the producer level, processor level,  
21 distribution level, and like somebody buying eggs like Walmart  
22 for a retail -- retail store. It's used throughout the supply  
23 chain, and it would have been part of the basis for how  
24 Walmart would have purchased eggs.

25 Q. Is it something like a benchmark price?



1 A. It is.

2 Q. And did the Urner Barry price affect what Walmart itself  
3 would pay for eggs?

4 A. It did. The Urner Barry was the baseline, and then our  
5 price at Walmart would be either a discount to or a plus up to  
6 the Urner Barry price, and that's kind of the benchmark we  
7 would start from.

8 Q. So, Mr. Airoso, if egg producers had engaged in conduct  
9 that would reduce supply and affect this benchmark price,  
10 would that increase the price that Walmart would pay for eggs?

11 A. Absolutely.

12 MR. DESTEFANO: Objection.

13 MR. BIZAR: Objection. Leading, Your Honor.

14 THE COURT: Sustained.

15 BY MR. OLSON:

16 Q. Would changes, Mr. Airoso, in the Urner Barry benchmark  
17 price affect the price that Walmart would pay for eggs?

18 A. They would.

19 Q. And is that both up and down?

20 A. That is correct.

21 Q. Okay. You've mentioned earlier that when you came into  
22 the role, you didn't hear about the 100% rule.

23 A. Correct.

24 Q. Was there a time when you became -- when you first heard  
25 of that requirement?

1 A. I did. In May of 2008. So at that point in time began  
2 the process of doing the bidding process, and we began to look  
3 at some suppliers that were not currently supplying to  
4 Walmart, and one of those suppliers was not using the  
5 certified process. And at that point in time, we began to  
6 look at them as a candidate to be in our big pool.

7 That information got out to other suppliers in the  
8 industry. At that point in time, the UEP leadership as well  
9 as leadership from Cal-Maine and CCF and others came to see  
10 us, called us, and talked to us about the Certified Program  
11 and that it needs to be 100 percent compliant and how  
12 important that was.

13 Q. And what was your personal reaction when you first  
14 learned about this 100% rule?

15 A. Yeah, I didn't -- my first reaction was it wasn't  
16 necessary, right? I felt like it was appropriate for Walmart  
17 to have specifications for the hens that were being used to  
18 produce eggs for us, but I didn't feel it was appropriate for  
19 Walmart to make decisions for the producers about how they  
20 dealt with the rest of the industry. I felt like that should  
21 be something that they dealt with individually.

22 Q. Okay. You just referenced the bidding process --

23 A. Yep.

24 Q. -- in the spring of 2008. So let's -- I mean spring and  
25 summer.

1 specifications.

2 Q. And do you recall what -- at this time when the bidding  
3 process started, what the Walmart specifications required  
4 about animal welfare?

5 A. I do. At that point in time when the process started, we  
6 had been using something that had been in place for several  
7 years at Walmart. And in the specifications for animal  
8 welfare it required that they participate in the FMI and the  
9 UEP Certified process.

10 Q. And what was your understanding of why Walmart had that  
11 requirement?

12 A. Yeah, so my understanding is that it had been in place  
13 for several years. The suppliers in the industry for the most  
14 part used it, and because of that I really didn't think about  
15 it very much. It just kind of was in place and that's what we  
16 started off the process with.

17 Q. Again, when you started off the process with those  
18 specifications, did you have an understanding that those  
19 guidelines, the UEP Guidelines, in particular, required a  
20 producer to follow some 100% rule?

21 A. No, I had no idea of that.

22 Q. Now, was there a point during the 2008 bidding process  
23 that Walmart changed its specifications with regard to animal  
24 welfare?

25 A. Yes, we did.

1           THE COURT: The first page does appear to be  
2    hearsay.

3           MR. OLSON: Well, we would welcome a limiting  
4    instruction. We're not introducing it for the truth of what's  
5    stated.

6           THE COURT: What is the purpose of it?

7           MR. OLSON: The purpose is, as the witness  
8    testified, this is when Walmart communicated to its suppliers  
9    a change of specifications, and it's also when those suppliers  
10   learned who else was in the bidding process. So whether any  
11   of that was true or not, it -- the information was provided.

12          THE COURT: Well, you can use the remainder of the  
13   exhibit, but there's still -- I'm not quite sure what the  
14   point is of the transmittal e-mail?

15          MR. OLSON: Okay.

16   BY MR. OLSON:

17   Q. You can put that document aside.

18           Do you -- you referred to the information getting  
19   out to Walmart's current suppliers. Do you recall when that  
20   occurred?

21   A. In this e-mail it would have been when we would have made  
22   the changes known to the specifications in or around late May  
23   of 2008.

24   Q. And would this have been when Walmart's incumbent  
25   suppliers learned that Walmart was considering using Sparboe

1 Farms as a new supplier?

2 A. That is correct. All the potential suppliers were sent a  
3 single e-mail where they were all on copy. So all of the  
4 current suppliers and incumbent suppliers would have known  
5 about any additional potential suppliers like Sparboe Farms.

6 Q. And you also referenced Walmart communicating information  
7 where they changed specifications.

8 A. That is correct.

9 Q. How did Walmart change its specifications with regard to  
10 the animal welfare requirements?

11 A. Yes, specifically we changed the specification to say  
12 that animal welfare needed to be the UEP Certified process,  
13 equivalent or better.

14 In this case, in the e-mail, we said better, and  
15 later on we changed that, but, yeah, UEP or better.

16 Q. So the change at this time was from not UEP and FMI  
17 exclusively, but to --

18 A. A broader set of programs could be used as long as the  
19 animal welfare requirements were as good as the UEP or better.

20 Q. Okay. All right, let's talk about Sparboe Farms a bit.

21 What did you know about Sparboe Farms at the time  
22 you gave them an opportunity to bid for the business?

23 A. Yes, so Sparboe Farms was a new potential supplier to  
24 Walmart, and they were not using the UEP Certified process.

25 So I felt it would be prudent to take the egg buyer and a

1 group of Walmart associates. We went up and visited them on  
2 one of their farms. We met the team that ran  
3 Sparboe's business at the time. We reviewed their farms,  
4 looked at all of their facilities. And we also went through  
5 their PVP program, and what they were going to do to certify  
6 that food safety and animal welfare was being taken care of.  
7 And we came back from that meeting feeling very good about  
8 what they had done and that they could be a supplier to  
9 Walmart.

10 Q. So you referred to the PVP program. Was that a program  
11 that Sparboe had?

12 A. That's correct.

13 Q. And what was your general understanding of the PVP  
14 program?

15 A. Yeah, so the PVP program was a program that was going to  
16 be audited and is audited by the USDA, and as they had  
17 designed it, it provided for the animal welfare requirements  
18 that we wanted at Walmart. And we felt like the program was a  
19 very good program and potentially better than the UEP  
20 Certified process program.

21 And the one thing that I do remember specifically,  
22 though, is that it did not have a 100 percent requirement of  
23 like all of your eggs and all of your farms. It was  
24 specifically just the eggs that they were going to be selling  
25 to Walmart from those farms that were going to sell to Walmart

1 would be certified.

2 Q. So your understanding is that one of the differences  
3 between the PVP program and the UEP Program was that the UEP  
4 Program had the 100% rule and the Sparboe program did not?

5 A. That is correct.

6 Q. And what was your reaction to that difference?

7 A. Um, it seemed reasonable to me. Um, you know, again, at  
8 Walmart, we were specifically worried about the hens that were  
9 laying eggs and how they were treated and that they were  
10 treated within the specifications that we had, that they were  
11 treated humanely.

12 But we didn't really believe that we should be  
13 making decisions for other folks about what they should do in  
14 terms of how they handled their business. Felt really that  
15 should be something based on other customers' demands.

16 Q. Did you have any concerns about the fact that the Sparboe  
17 Farms' program did not have a 100 percent compliance?

18 A. No, not at all.

19 Q. Did you make an effort to learn information or request  
20 information from Sparboe about their program so you could be  
21 educated about it?

22 A. We did, yes.

23 Q. And what do you recall in that regard? How did you go  
24 about doing that?

25 A. Yeah, so we met with several folks from Sparboe,

1 specifically with the -- I'm probably saying his last name  
2 incorrectly, Regensburger, I think is how you pronounce it.  
3 He was the lead for Sparboe Farms. We met with Sparboe Farms  
4 to understand and get a detail around their Process Verified  
5 Program, and they specifically provided information to myself  
6 and to Clay Adams, the buyer, in various ways to include  
7 things like e-mail and other ways to get us information.

8 Q. Okay. And let me hand you, for identification purposes,  
9 an exhibit that we have marked Plaintiffs' Exhibit 251.

10 A. Okay.

11 Q. Mr. Airoso, can you identify Exhibit 251 for us?

12 A. Yeah. This was an e-mail -- an e-mail chain between Lee  
13 Regensburger, Clay Adams and myself.

14 Q. And how did the e-mail chain begin?

15 A. It began with me asking the -- for information regarding  
16 their programs, the PVP program, specifically, and how it  
17 related to animal health and welfare, and how I might be able  
18 to explain that information to folks at Walmart.

19 Q. And is that the e-mail on May 28, 2008?

20 A. That's correct.

21 Let me verify that real quick, please.

22 Yes.

23 Q. I think you'll find yours is on the back of the chain.

24 A. Okay, yes.

25 Q. And is that -- is that an e-mail that you recall sending



1 at that time?

2 A. I do.

3 Q. And did you express your views about  
4 Walmart's requirements at that time?

5 A. I did.

6 MR. OLSON: Your Honor, we move for the admission of  
7 Plaintiffs' Exhibit 251.

8 MR. DESTEFANO: Objection, again, on hearsay  
9 grounds, Your Honor.

10 THE COURT: Overruled.

11 MR. OLSON: Can we publish the document?

12 THE COURT: You may.

13 MR. OLSON: Thank you. Hopefully we're pulling it  
14 up.

15 BY MR. OLSON:

16 Q. Okay, and let's look at the page 4 of the e-mail at the  
17 top, which Mr. Airoso, that's the one you wrote that began the  
18 chain; is that right?

19 A. Yes, sir.

20 Q. And the first line of the e-mail that you wrote says: As  
21 we have told you, we do not expect you to become part of the  
22 UEP.

23 What were you communicating there, sir?

24 A. Yeah, so I think Sparboe Farms had some questions about  
25 whether or not we would force them to use the UEP Certified

1 centers to Sparboe Farms, and that was going to be supplied by  
2 two of their five farms.

3 Q. And so Walmart would have a new supplier?

4 A. That's correct.

5 Q. And for the jury's sake, when you refer to distribution  
6 centers, can you just explain what those are and generally  
7 what the state of distribution centers were at this time at  
8 Walmart?

9 A. Yeah, so there were 41 distribution centers in the  
10 United States, kind of put it out geographically to get  
11 products to our stores. And of those 41 distribution centers,  
12 on average, they might serve 150 or 200 stores. And in this  
13 case, we awarded five of those distribution centers to Sparboe  
14 Farms for them to send eggs into, and for us to distribute  
15 those eggs then to our stores.

16 Q. And why did you award the business to Sparboe?

17 A. Yeah, so they had a very good competitive price. We felt  
18 comfortable with their food safety and animal welfare programs  
19 and felt like in every way they would be a really good  
20 supplier to Walmart.

21 Q. And did you have any concerns about having to defend the  
22 fact that Walmart was choosing a supplier that did not have a  
23 100 percent requirement?

24 A. I did not. Sparboe, at that point in time, had told us  
25 that they would be certified on the farms that were going to

1 be supplying to us and that in the near future, they were  
2 going to have the other three additional farms that were not  
3 going to be shipping to Walmart, that they would have those  
4 certified under their PVP program to ensure that they had the  
5 cage space density requirements that were in our  
6 specifications taken care of.

7           And so they already told me that. So as part of  
8 that, I really wasn't worried because the other option to get  
9 those other three farms immediately within spec would be to  
10 slaughter a whole bunch of hens, right? And I didn't feel  
11 like that was the right choice, and I didn't think that other  
12 groups were going to come to us and say, Why didn't you force  
13 the slaughter of a bunch of birds?

14 Q. Let me make sure that I have my math right. I think you  
15 said that Walmart awarded five distribution centers from two  
16 Sparboe Farms?

17 A. Right.

18 Q. And then you referred to Sparboe having three other  
19 farms; is that right?

20 A. Yes.

21 Q. So it's five total?

22 A. Correct.

23 Q. And I believe what you just said that Sparboe,  
24 immediately for the supply to Walmart, was going to comply  
25 with these guidelines and then they were going to bring the

1 MS. CRABTREE: Thank you.

2 THE COURT: Mr. Bizar is ready to go. He's now  
3 thanked me twice.

4 See you all tomorrow.

5 MR. BIZAR: See you tomorrow.

6 (Court adjourned).  
7

8  
9 C E R T I F I C A T E

10 I certify that the foregoing is a correct transcript  
11 from the record of the proceedings in the above-entitled  
12 matter.  
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16 \_\_\_\_\_  
Kathleen Feldman, CSR, CRR, RPR, CM  
17 Official Court Reporter

18 Date: \_\_\_\_\_  
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